No. 03-633

Supreme Court, U.S.
FILED
JUL 19 2004
OFFICE OF THE CLERK

In The Supreme Court of the United States

DONALD P. ROPER, Superintendent,
Potosi Correctional Center,

Petitioner,

v.

CHRISTOPHER SIMMONS,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Missouri

BRIEF OF *AMICI CURIAE* PRESIDENT JAMES EARL CARTER, JR., PRESIDENT FREDERIK WILLEM DE KLERK, PRESIDENT MIKHAIL SERGEYEVICH GORBACHEV, PRESIDENT OSCAR ARIAS SANCHEZ, PRESIDENT LECH WALESA, SHIRIN EBADI, ADOLFO PEREZ ESQUIVEL, THE DALAI LAMA, MAIREAD CORRIGAN MAGUIRE, DR. JOSEPH ROTBLAT, ARCHBISHOP DESMOND TUTU, BETTY WILLIAMS, JODY WILLIAMS, AMERICAN FRIENDS SERVICE COMMITTEE, AMNESTY INTERNATIONAL, INTERNATIONAL PHYSICIANS FOR THE PREVENTION OF NUCLEAR WAR, AND THE PUGWASH CONFERENCES ON SCIENCE AND WORLD AFFAIRS (NOBEL PEACE PRIZE LAUREATES) IN SUPPORT OF RESPONDENT

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STATEMENT OF *AMICI CURIAE* INTEREST

We, recipients of the Nobel Peace Prize, file this brief as *amici curiae* in support of Respondent, pursuant to Rule 37.3 of the Court.[1]

The Nobel Academy was established in 1901 and in accordance with the Statutes of the Nobel Foundation, prizes are awarded each year to those who, in the preceding year, have "conferred the greatest benefit to mankind" in the fields of physics, chemistry, medicine, literature, peace and economics. The Peace Prize is awarded to "the person who has the done the most or the best work for fraternity between nations, for the abolition of standing armies and for the holding and promotion of peace congresses."[2] Each of the *amici curiae* has been awarded the Nobel Peace Prize for efforts in advancing the principles of democracy and the protection of human rights worldwide. We have a continued interest in ensuring that internationally accepted standards of human rights and morality are respected by every nation.

The Nobel Peace Prize and its winners are a testament to the relevance of global opinion and practice in the area of human rights, and the importance of respecting internationally accepted standards of morality. *Amici curiae* have brought scores of human rights issues to the world's attention, resulting in the cessation of practices that violate human rights. Examples include the dismantling of

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[1] Letters of consent from both parties are on file with the Clerk of this Court. *Amici* have not received any contribution or support for this brief from either party, and no counsel for either party authored this brief in whole or in part. *Amici* have not received any monetary contribution to the submission of this brief.

[2] Statutes of the Nobel Foundation, ¶ 1.

apartheid in South Africa, the easing of tensions in Northern Ireland and the passing of the Ottawa Treaty banning the use of landmines. *Amici curiae* urge this Court to consider carefully the importance and relevance of respecting internationally accepted principles of human rights and morality. We have publicly stated our beliefs that "unconditional adherence to international law is essential" and that the "death penalty is . . . especially unconscionable when imposed on children."[3] When receiving his Nobel Peace Prize in 2002, President Jimmy Carter also reflected on the strength of these legal and moral concerns when he endorsed the international movement toward "prohibition of the death penalty, at least for children."[4]

SUMMARY OF ARGUMENT

At issue before this Court is whether the death penalty for a crime committed by a person under the age of eighteen constitutes "cruel and unusual punishment" in violation of the Eighth Amendment to the Constitution of the United States of America.

In order to answer this question this Court should consider the opinion of the international community, which has rejected the death penalty for child offenders worldwide. That opinion is exceptionally relevant when determining whether such a practice contradicts "evolving

[3] Final Statement of the Fourth World Summit of Nobel Peace Laureates, Rome, November 30, 2003; *available at* http://www.ippnw.org/NobelPeaceSummit2003.html.

[4] Jimmy Carter, Nobel Lecture at the Nobel Academy Dec. 10, 2002, *available at* http://www.nobel.se/peace/laureates/2002/carter-lecture.html (last visited June 30, 2004).

standards of decency that mark the progress of a maturing society."[5] This Court historically has considered internationally accepted standards of human rights and decency,[6] and especially should consider international standards in this case.

The prohibition on the death penalty for child offenders is widely recognized as a rule of customary international law, which has been defined as the "general and consistent practice of states followed by them from a sense of legal obligation."[7] "[S]tate practice is generally interpreted to mean official government conduct which would include state legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international and regional governmental organizations, such as the United Nations and the Organization of American States and their organs, domestic policy statements, press releases and official manuals on legal questions."[8]

[5] *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

[6] *See, e.g.*, *Enmund v. Florida*, 458 U.S. 782, 796-797 n.22 (1982) (observing that felony murder doctrine had been eliminated or restricted in England, India, Canada, and a "number of other Commonwealth countries"); *Coker v. Georgia*, 433 U.S. 584, 596 n.10 (1977) (finding that only 3 of 60 nations surveyed in 1965 retained the death penalty for rape); *Trop*, 356 U.S. at 102-03 (finding that only 2 of 84 nations surveyed imposed denationalization as punishment for desertion).

[7] Restatement (Third) of the Foreign Relations Law of the United States § 102 (2) (1987); *see also* Statute of the International Court of Justice, June 26, 1945, art. 38, 59 Stat. 1055, 1060, T.S. 993.

[8] *Domingues v. United States*, Inter-Am. C.H.R., Report No. 62/02, Merits Case 12.285, October 22, 2002, at ¶ 47 (citing Asylum Case (Colum. v. Peru), 1950 I.C.J. 266, 276-77 (Nov. 30)).

State practice almost universally rejects the death penalty for child offenders. As a consequence, in a series of decisions against the United States, the Inter-American Commission on Human Rights has found that the customary international law bar on the juvenile death penalty has evolved to *jus cogens* status.[9] A *jus cogens* prohibition is a "rule[] of customary international law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary law of contrary effect."[10] A state that persistently objects to a customary international law rule usually may be held exempt from the rule, but all states are bound by *jus cogens* prohibitions because they "derive their status from fundamental values held by the international community" and violations of such prohibitions are "considered to shock the conscience of humankind."[11]

The unusual strength and clear definition of the international prohibition on the death penalty for offences committed by children under eighteen years old makes it particularly relevant to this Court's decision whether to

[9] *Domingues, supra*; *Beazley v. United States*, Inter-Am. C.H.R., Report No. 101/03, Merits Case 12.412, December 29, 2003; *Thomas v. United States*, Inter-Am. C.H.R., Report No. 100/03, Merits Case 12.240, December 29, 2003; *Graham v. United States*, Inter-Am. C.H.R., Report No. 97/03, Merits Case 11.193, December 29, 2003. In all three of the latter cases, wherein executions occurred, the Inter-American Commission recommends that the United States provide the next-of-kin with "an effective remedy, which includes compensation."

[10] *Domingues, supra*, at ¶ 49 (citing Vienna Convention on the Law of Treaties, *adopted* May 22, 1969, 1155 U.N.T.S. 331, UN Doc. A/CONF. 39/27, at arts. 53, 64).

[11] *Id.* (citing Barcelona Traction, Light & Power Co., Ltd. (Belgium v. Spain), Second Phase, 1970 I.C.J. 3, 32 (Feb. 5) (sep. op. Judge Ammoun)).

extend Eighth Amendment protection in this case.[12] This Court always has maintained that United States courts must construe domestic law so as to avoid violating principles of international law.[13] In particular, this Court has interpreted the fundamental law expressed in the constitutional guarantee of due process and prohibition on cruel and unusual punishment as protection against acts that, among the nations of the world, are "everywhere forbidden."[14]

[12] *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964) (noting that "the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it"); *see* Jules Lobel, *The Limits of Constitutional Power: Conflicts between Foreign Policy and International Law*, 71 Va. L. Rev. 1071, 1075 (1985) (noting that "certain rules [which] have attained the status of fundamental international norms from which no derogation is permitted ... resemble constitutional principles ... [and] echo theories, prevalent at the founding of the American Republic, holding that the fundamental principles of the law of nations limited the constitutional power of a sovereign").

[13] *See, e.g.*, *The Apollon*, 22 U.S. (9 Wheat) 362, 370-71 (1824) ("It cannot be presumed that congress would voluntarily justify such a clear violation of the laws of nations."); *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 102, 118 (1804).

[14] *E.g.*, *Trop*, 356 U.S. at 102-03. Indeed, lower federal courts have recognized that a *jus cogens* norm may impose a restraint of constitutional dimension. *Committee of United States Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929, 941 (D.C. Cir. 1988) ("Such basic norms of international law ... may well restrain our government in the same way that the Constitution restrains it."); *Gisbert v. United States Attorney General*, 988 F.2d 1437, 1448 (5th Cir. 1993) (noting that *Reagan* raised, but did not decide, whether "doctrines of *jus cogens* supersede domestic law").

ARGUMENT

A. INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW PROHIBITS THE DEATH PENALTY FOR CHILD OFFENDERS

The protection of human dignity is at the core of both international human rights law and the Eighth Amendment. This Court has said: "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man."[15] Similarly, the preambles of many human rights treaties state that the concept of human dignity is the bedrock principle upon which human rights are based.[16] The fundamental right to human dignity grounds the rejection of the death penalty for child offenders in international law.[17]

Evidence for the rule barring the death penalty for child offenders includes, inter alia, treaty provisions, resolutions adopted by international bodies, jurisprudence of international courts and treaty bodies, and national

[15] *Trop*, 356 U.S. at 100.

[16] The Preamble of the International Covenant on Civil and Political Rights, to which the United States is a party, asserts that "these rights derive from the inherent dignity of the human person." International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (ratified by the United States June 8, 1992) [hereinafter ICCPR]. The Preamble to the Convention on the Rights of the Child recognizes "the inherent dignity and of the equal and unalienable rights of all members of the human family." United Nations Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1448 [hereinafter CRC]. *See also* Preamble to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984).

[17] *E.g.*, CRC, *supra*, at art. 37 (c). Within the same article prohibiting the juvenile death penalty the CRC requires, "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person." *Id.*

level state practice. Such evidence is used by the International Court of Justice to determine "international custom, as evidence of a general practice accepted as law," under Article 38 of its Statute, which identifies the sources of law to decide cases.[18]

i) International treaties and resolutions illustrate that the death penalty for child offenders is contrary to internationally accepted standards of human rights.

A number of widely ratified multilateral human rights treaties prohibit the death penalty for child offenders. These include the *International Covenant on Civil and Political Rights* ("ICCPR"), the *American Convention on Human Rights* ("ACHR"),[19] the *United Nations Convention on the Rights of the Child* ("CRC"), and the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* ("Fourth Geneva Convention").[20]

The ICCPR, which has been ratified by 152 nations,[21] prohibits the death penalty for offenders under the age of eighteen. According to Article 4 of the ICCPR, parties may not "derogate" from this prohibition in Article 6(5)[22] even

[18] Statute of the International Court of Justice, *supra*, at art. 38.

[19] American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123, 9 I.L.M. 673 [hereinafter ACHR].

[20] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 3560, 75 U.N.T.S. 286 (ratified by the United States 1955).

[21] United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties, as of 09 June 2004*, at 12.

[22] ICCPR, *supra*, art. 6(5) ("Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age. . . .").

"in time of public emergency which threatens the life of a nation."[23] In 1978, President Carter submitted the ICCPR to the Senate for its advice and consent. Final ratification came in 1992, with a reservation to Article 6(5), which reads:

> The United States reserves the right, subject to its Constitutional restraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.[24]

Eleven other parties to the ICCPR (Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain and Sweden) immediately entered formal objections to this reservation.[25] Subsequently, the United Nations Human Rights Committee, which the United States recognizes as competent to monitor ICCPR compliance,[26] declared the reservation to Article 6(5) "incompatible with the object and purpose of the Covenant" and asserted that it "deplored" state statutes in the

[23] ICCPR, *supra*, art. 4 (1) & (2).

[24] Senate Committee On Foreign Relations Report on the International Covenant on Civil and Political Rights, S. Exec. Report. No. 23, 102d Cong., 2d Sess. (1992) *reprinted in* 31 I.L.M. 645, 653-54 (1992).

[25] *Reservations, Declarations, Notifications and Objections relating to the International Covenant on Civil and Political Rights and the Optional Protocols thereto*, U.N. Doc. CCPR/C/2/Rev.4, Part D (1994).

[26] *Id.* at Part F ("The United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under article 41 in which a State party claims that another State party is not fulfilling its obligations under the Covenant.").

United States allowing the death penalty for "crimes committed by persons under 18."[27]

The ACHR, which has been ratified by 25 nations of the Western Hemisphere, also prohibits capital punishment for offenders under the age of eighteen. According to Article 27 of the ACHR, parties may not "derogate" from this prohibition in Article 4(5) even "[i]n time of war, public danger or other emergency that threatens the independence or security of a State Party."[28]

The CRC, which has been ratified by 192 nations, prohibits the death penalty for offenders under 18 in Article 37(a).[29] The United States and Somalia alone have not ratified the CRC. Somalia, however, has acceded to the ICCPR,[30] leaving the United States the only nation in the world that has not committed itself by treaty to bar the death penalty for offences committed by persons under 18.

Although the United States has not ratified the ACHR or the CRC, it has signed both treaties. According to Article 18(a) of the Vienna Convention on the Law of Treaties,[31] a provision which reflects customary international law,[32] signatories to treaties must not act in a

[27] *Concluding Observations of the Human Rights Committee: United States of America*, U.N. GAOR Hum. Rts. Comm., 50th Sess., ¶¶ 279, 292, U.N. Doc. CCPR/C/79/Add.50, A/50/40 (1995).

[28] ACHR, *supra*, art. 27 (1) & (2).

[29] CRC, *supra*, art. 37(a); *Status of Ratifications of the Principal International Human Rights Treaties, as of 09 June 2004*, *supra* at 12 (reporting 192 parties).

[30] *Id.* at 10 (reporting that Somalia acceded to the ICCPR on April 24, 1990).

[31] Vienna Convention on the Law of Treaties, *supra*, art. 18(a).

[32] Ian Brownlie, Principles of Public International Law 603 (3d ed., Oxford, Clarendon Press 1979).

manner that defeats the "object and purpose" of the treaty. By continuing to sentence child offenders to death, the United States is acting in a way that tends to defeat the object and purpose of the ACHR and the CRC.[33]

The Fourth Geneva Convention, which has been ratified by 192 nations,[34] also prohibits in Article 68 the death penalty for offences committed by persons under age 18 in occupied territories. At the time the United States ratified the Fourth Geneva Convention, it entered no reservation to Article 68.[35]

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[33] *Restrictions on the Death Penalty (Articles 4(2) and 4(4) American Convention on Human Rights*, Advisory Opinion No. OC-3/83 of Sept. 8, 1983, Inter-Am. Ct. H.R., ser. A: Judgments and Opinions, No. 3 (1983), *reprinted in* 23 I.L.M. 320, 341 (1984) (holding that reservations to "non-derogable fundamental rights" of the American Convention are inconsistent with the object and purpose of the treaty); Annual Report of the United Nations Committee on the Rights of the Child, U.N. GAOR, 51st Sess., Supp. No. 41, ¶ 183, U.N. Doc. A/51/41 (1996) (finding the "right to life" in Art. 6 to be one of the Convention's general principles).

[34] Department Federal des Affaires Etrangeres (Swiss), *Etats parties aux quatre Conventions de Geneve pour la protection des victims de la guerre*; link located at http://www.icrc.org/eng/party_gc (last visited July 10, 2004).

[35] William A. Schabas, *Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States Still a Party?*, 21 Brook. J. Int'l L. 277, 306 (1995). On December 23, 2002, the United States also ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict without any reservations. The United States' reservation to Article 6(5) of the International Covenant is inconsistent with its commitment to Article 3(1) and other provisions within the Protocol based on the recognition that "persons under the age of 18 years are entitled to special protection." Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, U.N. GAOR, 54th Sess., Annex I, at arts. 3(1), 3(3), 4(1), 4(2), 6(3), U.N. Doc. A/RES/54/263 (2000).

Aside from conventional international law, which itself can be evidence of a customary international rule, international human rights bodies have adopted numerous resolutions and declarations calling for the abolition of the death penalty for child offenders.[36] Most recently, on April 20, 2004, the United Nations Commission on Human Rights adopted Resolution 2004/48 on the Rights of the Child, which *inter alia* "[c]alls upon" those "States in which the death penalty has not been abolished" "to abolish by law as soon as possible the death penalty for those aged under 18 at the time of the commission of the offence."[37] At the request of the representative of the United States of America, a recorded vote was taken on the resolution, which was adopted with 52 votes in favour, 1 against (United States of America) and no abstentions.[38]

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[36] *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, E.S.C. Res. 1984/50, Annex, U.N. ESCOR Supp. No.1, at 33, U.N. Doc. E/1984/84 (1984); *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, Rule 17.2, G.A. res. 40/33, U.N. GAOR, 40th Sess., Supp. No. 53, at 207, U.N. Doc A/40/53 (1985); *The Question of the Death Penalty*, Comm. On Hum. Rts., 57th Sess., Resolution 2001/68, *adopted* April 25, 2001, E/CN.4/2001/RES/68 (2001); *The Question of the Death Penalty*, Comm. On. Hum. Rts., 56th Sess., Resolution 2000/65, *adopted* April 26, 2000, E/CN.4/RES/2000/65 (2000); *The Question of the Death Penalty*, Comm. On. Hum. Rts., 55th Sess., Resolution 1999/61, *adopted* April 28, 1999, E/CN.4/RES/1999/61 (1999).

[37] United Nations Commission on Human Rights, *Report to the Economic and Social Council on the Sixtieth Session of the Commission* (Draft Report), Res. 2004/48, *adopted* April 20, 2004, at 31 ¶ 35(a), U.N. Doc. E/CN.4/2004/L.11/Add.5.

[38] Explaining the vote prior to the vote, the Irish representative, speaking on behalf of the European Union and the Group of Latin American and Caribbean Countries, said no efforts had been spared in working toward a consensus resolution and announced that the groups considered the CRC "the standard in the promotion and protection of the rights of the child." United Nations Press Release, *Commission on*

(Continued on following page)

ii) The practice of other countries illustrates that the death penalty for child offenders is contrary to internationally accepted standards of human rights.

a) The practice of the British Commonwealth and Europe.

This Court repeatedly has examined the practices of countries sharing its Anglo-American heritage, as well as those of the European democracies, in the process of interpreting the United States Constitution.[39] The jurisprudence of the United States' legal predecessor, the United Kingdom, and the countries of the British Commonwealth is of particular relevance. Starting in 1887, executions of persons under eighteen were "virtually abolished" in the United Kingdom "by use of the royal prerogative of mercy."[40] In 1908, Parliament formally abolished the death penalty for persons under age sixteen (Children Act 1908, section 103), setting a norm roughly comparable to that in *Thompson v. Oklahoma*, 487 U.S.

Human Rights Adopts Resolutions on Rights of Women and Children, Specific Groups, Indigenous Issues, 20 April 2004 (at www.unhchr.ch). Also prior to the vote, the Argentinian representative asserted that "the objections stated by the United States were unacceptable." *Id.*

[39] *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988) (looking to "other nations that share our Anglo-American heritage" and "leading members of the Western European community"); *see also Enmund*, *supra* note 6; *Coker*, *supra* note 6; *Washington v. Glucksberg*, 521 U.S. 702, 710 n.8, 718-19 n.16 (1997) (surveying other nations' laws on assisted suicide); *Culombe v. Connecticut*, 367 U.S. 568, 583-84 n.25, 588 (1961) (looking at English interrogation practice); *Kilbourn v. Thompson*, 103 U.S. 168, 183-89 (1881) (referring to Parliament practices to determine whether House of Representatives had contempt power).

[40] Victor Bailey, *The Shadow of the Gallows: The Death Penalty and the British Labour Government, 1945-51*, 18 Law & Hist. Rev. 305, 305 n.1 (2000).

815 (1988) and *Stanford v. Kentucky*, 492 U.S. 361 (1989).[41] In 1933, Parliament again confirmed the actual cessation of executions of child offenders by raising the minimum age to eighteen on the date of sentencing.[42] In 1948, the death penalty was barred for persons who were under eighteen on the date when the offence was committed.[43] The bar on the death penalty for offenders under 18 spread within the British Commonwealth.[44]

In South Africa, during apartheid, national law prohibited the death sentence for offenders under age eighteen.[45] When South Africa completed the transition to full democracy, a new South African Constitution was adopted. The basic premise of its Bill of Rights is similar to that of the United States Constitution – it "enshrines . . . and affirms the democratic values of human dignity,

[41] The reforms represented in the Children Act were influenced by a "vast child-saving crusade sweeping across the United States," similar laws passed in France and Belgium, and efforts in Switzerland, Denmark, and Belgium. Sir Leon Radzinowicz and Roger Hood, *Judicial Discretion and Sentencing Standards: Victorian Attempts to Solve a Perennial Problem*, 127 U. Pa. L. Rev. 1288, 1327 (1979).

[42] *See* Bailey, *supra*, at 305 n.1. Children and Young Persons Act 1933 § 53(1) ("Death shall not be pronounced on . . . a person under age of 18 years.").

[43] Criminal Justice Act 1948 § 16 (repealed by Homicide Act 1957 § 17(2) & Sch. 2).

[44] Criminal Procedure (Amendment) Bill, 1952 (Hong Kong) (expressly adopting age definition of Criminal Justice Act 1948 § 16); *see* Hong Kong Legislative Council, Sittings, 1952 Session, Nov. 5 and 19, 1952 (http://www.legco.gov.hk/1952/h521105.pdf; http://www.legco.gov.hk/1952/h521119.pdf).

[45] *See* Section 277(3)(b) of Criminal Procedure Act No. 51 of 1977 (S. Afr.) ("The sentence of death shall not be imposed upon an accused who was under the age of 18 years at the time of the commission of the act which constituted the offense concerned.").

equality, and freedom."[46] In 1995, the Constitutional Court abolished the death penalty for all offences, holding that it was incompatible with the new constitution's rights to life and dignity.[47] The South African Constitution now explicitly incorporates the international legal definition of "child," affording numerous, specific, personal rights to children "under the age of 18 years."[48]

The United States' retention of the death penalty – and in particular for children – is of great concern to European nations, as reflected in recent demarches from the European Union and Council of Europe on the issue of children and the death penalty.[49] Even fifteen years ago, the European Court of Human Rights ruled that the extradition of an eighteen-year-old offender to the United States to face charges involving the death penalty would violate Article 3 of the European Convention on Human Rights,[50] which prohibits "torture or . . . inhuman or

[46] S. Afr. Const. ch. II, § 7.

[47] *State v. T. Makwanyane and M. Mchunu*, 1995 (3) SALR 391 (C.C.).

[48] S. Afr. Const. ch. II, § 28(3).

[49] European Union, *EU Demarche on the Death Penalty*, May 10, 2001 (presented by Swedish Presidency) (announcing EU clemency demarches in cases involving offenders under 18 and protesting that Article 6 of the ICCPR enshrines the minimum rules for the protection of the right to life); *Abolition of the Death Penalty in Council of Europe Observer States*, Council of Europe, Parliamentary Assembly, Report, Doc. 9908, 11 September 2003 (presented by Committee on Legal Affairs and Human Rights, Mrs. Renate Wohlwend, Rapporteur) ("[T]he execution of child offenders is not only a particularly heinous practice, but also clearly in violation of international law.").

[50] European Convention for the Protection of Human Rights and Fundamental Freedoms: Nov. 4, 1950, 213 U.N.T.S. 221, *entered into force*, Sept. 3, 1953.

degrading treatment or punishment" in part because of the youth of the defendant "at the time of the offence."[51]

b) The practice of the rest of the world.

A recent report by Nobel Peace Prize laureate Amnesty International, *The Exclusion of Child Offenders from the Death Penalty under General International Law*, documents the use of the juvenile death penalty worldwide.[52] Since 1990, only eight of the 191 United Nations member states are known to have inflicted the "ultimate punishment" on child offenders – Yemen, Nigeria, Pakistan, Saudi Arabia, Iran, the Democratic Republic of the Congo, China, and the United States of America. These eight countries have executed thirty-four child offenders. The United States alone is responsible for nineteen of those executions.[53] Four of the other seven nations have abolished the death penalty for child offenders. Of the remaining three, one has taken steps to abolish the death penalty for child offenders, one has commuted the death sentences of child offenders, and the other has denied that it executes child offenders.

[51] *Soering v. United Kingdom*, 11 Eur. Ct. H.R. 439, at ¶¶ 108, 109 (1989), *Guidelines to EU Policy Towards Third Countries on the Death Penalty*, adopted by the Council of the European Union, June 3, 1998; Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, *opened for signature* April 28, 1983, E.T.S. 14 (*entered into force* March 1, 1985).

[52] Amnesty International, *The Exclusion of Child Offenders from the Death Penalty Under General International Law*, July 2003, AI Index: ACT 50/004/2003 (available by AI Index search at www.amnesty.org/library/index) [hereinafter Amnesty International, *Exclusion of Child Offenders*].

[53] *Id.*

In 1994, Yemen changed its laws to outlaw the execution of child offenders.[54] Nigeria has passed national legislation prohibiting the death penalty for offenders under 18 and has told the United Nations that its sole reported execution of a child, which took place in 1997, was not of a child.[55] In 2000, Pakistan prohibited the death penalty for child offenders in the Juvenile Justice System Ordinance.[56] Although a child offender was executed after the passing of the Ordinance, President Musharraf has since commuted the death sentences of a large number of others.[57] Saudi Arabia vehemently denies that it has executed child offenders, despite reports of such executions.[58]

Iran is home to the most recent recipient of the Nobel Peace Prize, Shirin Ebadi, who was awarded the prize in recognition of her struggle to protect the rights of women and children. Iran is also home to the latest efforts to eliminate the death penalty for child offenders. In December 2003, the Iranian Parliament approved a bill to abolish the death penalty for offenders under the age of eighteen.[59]

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[54] Scott Peterson, *Despite Islamic Law, Yemen Bans Teen Death Penalty*, Christian Sci. Monitor, Feb. 2, 2000.

[55] Summary Record of 6th Meeting of the Sub-Commission on the Promotion and Protection of Human Rights, 52nd Sess., at ¶ 39, U.N. Doc. E/CN.4/Sub.2/2000/SR.6 (2000).

[56] Amnesty International, *Exclusion of Child Offenders*, *supra* note 52, at Appendix 3 (Pakistan).

[57] *Id.* at Appendix 3 (Pakistan) (reporting 125 commutations); Pakistan News Service, *74 Get Relief Against Death Sentence* (July 25, 2002), *available at* http://paknews.com/flash.php?id=5&date1=2002-07-25 (last visited July 6, 2004).

[58] *See* Summary Record of the 53rd Meeting of the Commission on Human Rights, 56th Sess., April 17, 2000, at ¶¶ 88 and 92, U.N. Doc. E/CN.4/2000/SR.53 (2000).

[59] Amnesty International, *United States of America: Supreme Court to Revisit Constitutionality of Executing Child Offenders*, AMR

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Prior to the introduction of this legislation, Iran had denied executing child offenders, despite reports to the contrary.[60]

In January 2000, a fourteen-year-old child soldier was executed in the Democratic Republic of the Congo after proceedings before a military tribunal that did not meet internationally accepted standards for a fair trial. However, in 2001, after an appeal from the international community, four child offenders who had been sentenced to death by a Congolese military court had their death sentences commuted.[61]

In 1997, China – the world's leading executioner and seventh country among those known to have executed child offenders since 1990 – amended its Criminal Law to prohibit the death penalty for offenders under eighteen.[62]

51/020/2004, January 27, 2004 (also reporting execution of 17-year-old offender in Iran on January 25, 2004); *see* Reuters, *Iran to stop executions of 15-18 year olds*, The New Zealand Herald, Sept. 29, 2003, *available at* http://www.nzherald.co.nz/latestnewsstory.cfm?storyID=3526022&thesection=news&thesubsection=world (last visited July 6, 2004) (quoting secretary of Supreme Council for Judicial Development: "The new law fully complies with Sharia law and modern judicial developments.").

[60] U.N. Press Release, Commission on Human Rights Starts Debate on Specific Groups and Individuals, 11 April 2001, Right of Reply by Representative of Iran.

[61] Amnesty International, *Exclusion of Child Offenders*, *supra* note 52, *citing* U.N. Doc. E/CN.4/2002/74, ¶ 108.

[62] Criminal Law of the People's Republic of China, adopted by the Second Session of the Fifth National People's Congress on July 1, 1979, and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997, Chapter Three, Section Five, Article 49 ("The death penalty is not to be applied to persons who have not reached the age of eighteen at the time the crime is committed . . . "). Amnesty International has reported that, contrary to Chinese law, an execution of a child offender occurred in China in 2003. *See* Amnesty International, *United States of America: Supreme Court to Revisit Constitutionality of Executing Child Offenders*, *supra* note 59, at n.2.

Worldwide domestic law changes also include the following. After acceding to the CRC in 1991, Myanmar (Burma) passed a Child Law in 1993, prohibiting the death penalty for young offenders.[63] The law provides that "[n]o death sentence shall be passed on any child" and "[n]o death sentence shall be passed on a youth" respectively. Sections 2(a) and 2(b) define "child" as any person under sixteen and "youth" as any person between sixteen and eighteen.

In March 2003, the Thai Senate approved the first reading of a bill designed to formally abolish the death penalty for offenders under the age of eighteen.[64]

In August 2002, the Philippines Supreme Court commuted the death sentences of twelve child offenders, reasoning that, under the revised Philippine Penal Code, "minority" was deemed a "privileged circumstance which prevents the imposition of the death penalty."[65]

Clearly, "the world community considers the execution of offenders aged below eighteen years at the time of their offence to be inconsistent with prevailing standards of decency."[66] The United States is the only nation in the world that publicly condones the execution of child offenders.[67]

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[63] Child Law 1993 (Law No. 9/93, §§ 45 and 71 (enacted July 14, 1993) (Myan.).

[64] Mongkol Bangprapa, *Jail-term limits pass first vote – 50-year maximum penalty for minors*, The Bangkok Post, Mar. 14, 2003.

[65] Resolution of the Court En Banc, Luzviminda Puno, Supreme Court of the Philippines, O.C. No. 01-20, *Re: Letter of Ma. Victoria S. Diaz, Program Development Officer, Jesuit Prison Service*, dated July 30, 2002, filed Aug. 1, 2002, at 1.

[66] *Domingues*, *supra* note 8, at ¶ 84.

[67] The United States itself has pointed out that all but fourteen of the parties to the CRC have enacted domestic laws that conform to Article 37(a), which bars the death penalty for child offenders. *Domingues*, *supra* note 8, at ¶ 105.

iii) The prohibition of the death penalty for child offenders is increasingly recognized as *jus cogens*.

The exclusion of offenders under eighteen years old from the death penalty is so widely accepted in law and practice that it has become a rule of customary international law.[68] Furthermore, the Inter-American Commission on Human Rights recently declared that the worldwide rejection of the juvenile death penalty "has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*."[69] Norms of *jus cogens* "derive their status from fundamental values held by the international community, as violations of such peremptory norms are considered to shock the conscience of humankind and therefore bind the international community as a whole, irrespective of protest, recognition or acquiescence."[70] *Amici curiae* welcome the Inter-American Commission's conclusion, which reflects the nearly universal condemnation of execution of child offenders.

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[68] U.N. Sub-Commission on Human Rights Res. 2000/17, 26th mtg., U.N. Doc. E/CN.4/SUB.2/RES/2000/17 (2000) (the death penalty for offenders under 18 "is contrary to customary international law").

[69] *Domingues*, *supra* note 8, at ¶ 85; *accord Beazley*, *Thomas*, and *Graham*, *supra* note 9.

[70] *Domingues*, *supra* note 8, at ¶ 49.

B. APPLYING THE WORLD CONSENSUS AGAINST EXECUTING CHILD OFFENDERS FITS THIS COURT'S JURISPRUDENCE AND THE UNITED STATES' HISTORICAL COMMITMENT TO HUMAN RIGHTS.

i) This Court historically has considered the views of the world community to be relevant to Eighth and Fourteenth Amendment issues.

In a 1911 death penalty case involving a 17-year-old defendant, the Presiding Judge of the Texas Court of Criminal Appeals observed, "That the federal courts and government of the United States ha[ve] jurisdiction over cases arising under treaties and the law of nations . . . is not debatable. This doctrine has been upheld from the inception of our national life . . . and has never been seriously questioned in our judicial history."[71] The judge concluded, albeit in dissent, that the defendant's mob-driven trial had violated fundamental "rules of procedure applicable to the law of nations" and that, therefore, "his conviction and sentence were obtained without due process of law."[72]

The Texas judge accurately described this Court's recognition of the role of foreign and international law in federal constitutional jurisprudence. This Court long had recognized the wisdom of considering international

[71] *Ex parte Martinez*, 145 S.W. 959, 995, 1014-15 (Tex. Crim. App. 1912) (Davidson, P.J., dissenting) (citing *Miller v. The Resolution*, 2 U.S. (2 Dall.) 1 (1781) (Mem.); *The Estrella*, 17 U.S. (4 Wheat) 298 (1819) (Mem.); *United States v. Ortega*, 24 U.S. (11 Wheat) 467 (1826) (Mem.); *Blyew v. United States*, 80 U.S. (13 Wall.) 581 (1871) (Mem.); *Tenn v. Davis*, 100 U.S. 257 (1879) (Mem.); *Bors v. Preston*, 111 U.S. 252, 258 (1884); *Ames v. Kansas*, 111 U.S. 449, 467 (1884); *Hilton v. Guyot*, 159 U.S. 113 (1895); *La Abra Silver Mining Co. v. United States*, 175 U.S. 423 (1899); *The Paquete Habana*, 175 U.S. 677 (1900)).

[72] *Id.*

sources when interpreting the parameters of due process. For example, in 1884, this Court asserted in *Hurtado v. California*:

> The constitution of the United States was ordained, it is true by the descendents of Englishmen, who inherited the traditions of the English law and history; but it was made for an undefined and expanding future, and for a people gathered, and to be gathered, from many nations and of many tongues; and while we take just pride in the principles and institutions of the common law, we are not to forget that in lands where other systems of jurisprudence prevail, the ideas and processes of civil justice are also not unknown. . . . There is nothing in Magna Carta, rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age; and as it was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted.[73]

International law and foreign law, indeed, have "played a well-known role in the debates over the relationship between the Bill of Rights and the Fourteenth Amendment" and have contributed to this Court's understanding of substantive due process.[74] In *Palko v. Connecticut*, this Court interpreted "fundamental" rights under the Fourteenth Amendment in light of international practice as it

[73] *Hurtado v. California*, 110 U.S. 516, 531 (1884).

[74] Gerald L. Neuman, *The Uses of International Law in Constitutional Interpretation*, 98 Am. J. Int'l L. 82, 83 (2004); *see also* Harold Hongju Koh, *International Law as Part of Our Law*, 98 AJIL 43 (2004).

had in *Hurtado*, finding that such rights protect against harms of the sort that are "everywhere forbidden."[75]

The "cruel and unusual punishment" clause finds its origins in the English Declaration of Rights of 1689 and in the Magna Carta.[76] Like the due process clause, the cruel and unusual punishment clause protects fundamental rights, and this Court's investigation of practices that violate the clause embraces the idea that the Constitution was made for an undefined and expanding future. This Court announced its forward looking interpretation of the clause in *Weems v. United States*,[77] wherein it began to focus on "evolving standards of decency":

> Time works changes, brings into existence new conditions and purposes. Therefore a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This is particularly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it." The future is their care, and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be.

[75] *Palko v. Connecticut*, 302 U.S. 319, 325 n.3 (1937) (examining British, continental European, and Roman law sources and determining that double jeopardy "is not everywhere forbidden") (citation omitted), *overruled by Benton v. Maryland*, 395 U.S. 784 (1969) (holding that, contrary to *Palko*, "double jeopardy" is "a fundamental ideal in our constitutional heritage").

[76] *Trop v. Dulles*, 356 U.S. 86, 100 (1958). The English Declaration of Rights reads, "That excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted." The English Declaration of Rights, Part V, Article X (1 Wm. & Mary, 2d Sess. (1689), c. 2). The protest against cruel treatment, also present in some American colonial laws, may extend back to 1583, when Sir Robert Beale allegedly attempted to assert such protection under the Magna Carta. *Furman v. Georgia*, 408 U.S. 238, 316 (1972) (Marshall, J., concurring).

[77] *Weems v. United States*, 217 U.S. 349, 373 (1910).

Notably, in *Weems*, this Court interpreted the cruel and unusual punishment clause of a *Philippine* statute enacted by the United States Congress during the United States' colonial administration of the Philippines. In doing so, however, it explored the meaning of the Eighth Amendment, upon which the Philippine statute was based.[78] This Court held that the clause represented a non-derogable "fundamental law." Recognizing that the United States needed to respect the customs and "even prejudices" of the Philippine people while it played the role of occupying power, this Court nevertheless held that such deference was limited in all places by "certain great principles of government . . . which were deemed 'essential to the rule of law and the maintenance of individual freedom,'" and the practical rules of government essential to the preservation of those principles.[79] This Court concluded that the prohibition on cruel and unusual punishment was such a principle and that it must be observed in the Philippine Islands "however [it] might conflict with the customs or laws of procedure with which they were familiar." The "'enlightened thought of the Philippine Islands' would come to appreciate" its importance.[80]

[78] *Id.* at 382, 383-84 (White, J., dissenting).

[79] *Id.* at 367 (referring to *Kepner v. United States*, 195 U.S. 100 (1900), and quoting instructions of the President to the Philippine Commission).

[80] *Id.* at 367-68.

In *Trop v. Dulles*,[81] this Court looked to the "enlightened thought" of the world to determine the evolving content of those ills against which the Eighth Amendment protected. This Court held that denationalization as punishment for crime violated the cruel and unusual punishment clause because of its severity (rendering the recipient stateless without "the right to have rights") and its global rejection. Surveying the "civilized nations of the world," this Court found that it was almost "everywhere forbidden."[82]

The death penalty for offenders under eighteen now is not only forbidden almost everywhere, but also condemned and vigorously protested in many places.[83] "Within the international community, the execution of child offenders [by the United States] is widely regarded as contrary to established norms of customary international law."[84] The Inter-American Commission has made a reasonable case that a non-derogable "fundamental law" has arisen clearly

[81] *Trop*, 356 U.S. at 102-03.

[82] *Id.* (noting that, out of 84 countries surveyed, only Turkey and the Philippines imposed denationalization as punishment).

[83] *See, e.g.*, United Nations Sub-Commission on the Promotion and Protection of Human Rights, *The death penalty in relation to juvenile offenders*, Resolution 2000/17 (asserting that "the imposition of the death penalty on those aged under 18 at the time of the commission of the offense is contrary to customary international law" and is "condemn[ed] unequivocally"); *Reservations, Declarations, Notifications and Objections relating to the International Covenant on Civil and Political Rights and the Optional Protocols thereto*, *supra*, at Part D (objections to the United States' reservation to Article 6; many asserting that Article 6 represents the minimum standard for protection of the right to life and the last [Sweden] complaining that "[r]eservations of this nature contribute to undermining the basis of international treaty law").

[84] Letter from Juan Jose Bremer to Texas Board of Pardons and Paroles, May 3, 2002, *available at* www.abanet.org/crimjust/juvjus/beazleymexico02.html (last visited July 6, 2004).

identifying an evil of the sort which the Eighth and Fourteenth Amendments also are designed to bar.[85]

This Court should be guided by its Eighth and Fourteenth[86] Amendment precedents to determine that United States standards of decency must meet the minimum normative threshold of world opinion and practice.[87] The customary international law norm places offenders under the age of eighteen "beyond the State's power to punish

[85] The last time this Court requested briefing on the *jus cogens* issue, the Clinton Administration argued it was not ripe for review, because "there [was] no other source of decisional law (such as decisions of the International Court of Justice) that this Court might find helpful in resolving the question whether the execution of a [child] offender violates a *jus cogens* norm." Brief for the United States as Amicus Curiae, *Domingues v. Nevada*, No. 98-8327, 1999 WL 33639524 (Oct. 4, 1999), at 19. This Court now has sufficient sources in the October 2002 decision by the Inter-American Commission in *Domingues v. United States*, *supra* note 8, and the Commission's three subsequent decisions on the *jus cogens* issue. *Beazley, Thomas, and Graham*, *supra* note 9.

[86] *See Stanford v. Kentucky*, 492 U.S. 361, 369 n.1 (1989) (finding that "the practices of other nations, particularly other democracies" could be "relevant to determining whether a practice [is] so implicit in the concept of ordered liberty that it occupies a place not merely in our mores, but, text permitting, in our Constitution as well"). Substantive due process protects both those rights essential to ordered liberty and those that set classes of defendants beyond the power of the state to punish. *Penry v. Lynaugh*, 492 U.S. 302, 329-30 (1989).

[87] *See Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 2249 n.21 (2002); *Lawrence v. Texas*, 123 S. Ct. 2472, 2481 (2003); *see also* House Judiciary Subcommittee on the Constitution, Appropriate Role of Foreign Judgments in the Interpretation of American Law, March 25, 2004, http://commdocs.house.gov/committees/judiciary/hju92673.000/hju92673_0f.htm ("Hearing Transcript" at Ramsey, page 96; last visited July 12, 2004) (statement of Prof. Michael Ramsey, ex-law clerk for Justice Scalia) (observing that bar on the juvenile death penalty is an example in which "foreign sources point unambiguously in one direction" and may be "truly dispositive as opposed to . . . buttress[ing this Court's] opinions arrived at for other reasons.").

with death."[88] Competing interests of federalism and separation of powers should fall away before the norm, because "[t]here is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose."[89]

ii) The United States has played a historically positive role in the worldwide development of fundamental human rights.

In the immediate aftermaths of the two World Wars, the United States aggressively led the development of

[88] *Penry*, 492 U.S. at 329-330.

[89] *Id.* (quoting *Mackey v. United States*, 401 U.S. 667, 675, 693 (1971) (Harlan, J., concurring in judgments in part and dissenting in part)). In 1980, the United States jointly sponsored a U.N. General Assembly resolution describing the ICCPR provision that bars the death penalty for child offenders, without qualification, as establishing the "minimum standard" for all member nations, not just those who had ratified the ICCPR. G.A. Res. 35/172, U.N. GAOR Supp. (No. 48) at 195, U.N. Doc. A/35/48 (1980). Congress has abolished the federal death penalty for offenders under 18. 18 U.S.C. § 3591. However, for years the Executive and Senate have deferred to the States in the treaty adoption process, following what they have described as a federalism understanding. *See, e.g.*, Louis Henkin, *Comment: U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 Amer. J. Int. L. 341 (1995) (explaining origin of the federalism understanding and other treaty modifications). In *Penry*, this Court held that such deference to the states (described as comity) is unwarranted when a fundamental norm places persons beyond the State's power to punish with death. *Penry*, 492 U.S. at 330. Given that deference afforded the States in the "federalism understanding" is the only discernable reason for the United States' Executive's continued protest against the customary international law norm and for its prior reservation to Article 6(5) of the ICCPR, *Penry* indicates that this Court should be able to directly incorporate the norm into its Eighth Amendment decision without concern about invading the foreign policy and treaty making powers of the other branches. *Contra* Brief for the United States as Amicus Curiae, *Domingues v. Nevada*, No. 98-8327 (October 1999) at 20.

multilateral institutions and treaties to protect fundamental norms on regional and world-wide levels. The world is indebted to the United States for its enthusiasm and vigor in setting the wheels of international human rights law in motion. *Amici* are humbled to have received the same prize as the esteemed U.S. statesmen, Woodrow Wilson and Cordell Hull. President Woodrow Wilson was awarded the Nobel Peace Prize in 1919 for his role in creating the League of Nations, and Secretary of State Cordell Hull was awarded the Nobel Peace Prize in 1945 for his role in the creation of the United Nations.[90]

Eleanor Roosevelt was a major participant in the drafting of the Universal Declaration of Human Rights.[91] Proclaimed in 1948, this groundbreaking document is widely considered to be the first instrument of modern international human rights law. Although not binding law, the Declaration paved the way for the development of several treaties protecting the rights of individuals worldwide.

The United States maintains its resolve on the universality of human rights. In March 2003, Secretary of State Colin Powell reiterated the "steadfast commitment of the United States to advance internationally accepted human rights principles worldwide." Powell also referred to President Bush's "solemn pledge that the United States [would] always stand for the non-negotiable demands of

[90] The preamble to the Charter of the United Nations reads: "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small," U.N. Charter, Preamble.

[91] Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 (1948).

human dignity" when launching the United States' State Department's report on human rights in other countries.[92]

We commend the State Department for addressing the rights of foreign citizens, and welcome the United States' dedication to promoting internationally accepted standards of human rights worldwide. We ask this Court to apply these standards, utilizing the opinions of international tribunals commensurate with U.S. constitutionalism (i.e., the Inter-American Commission on Human Rights), when evaluating the decency of its own national practice of executing child offenders.

CONCLUSION

The importance of international law to the issue before this Court is clear. The views of the world community play a significant role in the redressing of human rights abuses. If the world had not spoken out against apartheid, it might still be in place in South Africa. If Northern Ireland had not accepted the help of the United States, the peace agreement might never have come about. If nations across the world had not united to adopt the Ottawa Treaty, the use of landmines would be much more widespread than it is today. Nowhere is international law and opinion more important than in the field of human rights and humanitarianism.

When accepting his Nobel Peace Prize in 2001, United Nations Secretary-General Kofi Annan spoke of the "Butterfly Effect" – the theory that, in the world of nature,

[92] Secretary Colin L. Powell, Remarks at the Briefing on the State Department's 2002 Country Reports on Human Rights Practices, Washington D.C., March 31, 2003, *available at* http://www.state.gov/secretary/rm/2003/19218.htm (last visited July 6, 2004).

a butterfly flapping its wings in the Amazon rainforest can generate a violent storm on the other side of the world. As Mr. Annan said, "Today, we realize, perhaps more than ever, that the world of human activity also has its own 'Butterfly Effect' – for better or for worse."[93]

By continuing to execute child offenders in violation of international norms, the United States is not just leaving itself open to charges of hypocrisy, but also is endangering the rights of many around the world. Countries whose human rights records are criticized by the United States have no incentive to improve their records when the United States fails to meet the most fundamental, base-line standards.[94]

Amici curiae respectfully ask this Court to consider the relevance of internationally accepted standards of human rights and morality when addressing the constitutionality of the juvenile death penalty, especially in light of the Inter-American Commission's conclusion that the prohibition on that punishment has achieved *jus cogens* status. Norms of international law, such as the prohibitions on genocide, slavery and torture, are not merely "foreign moods, fads, or fashions" that we are seeking to "impose on Americans."[95] They protect human dignity across all of our national frontiers.

[93] Kofi Annan, Nobel Peace Lecture at the Nobel Academy, Oslo, Norway Dec. 10, 2001, *available at* http://www.nobel.se/peace/laureates/2001/annan-lecture.html (last visited July 6, 2004).

[94] The United States State Department has labeled as generally "poor" the human rights records of six of the seven other nations which have executed child offenders since 1990. United States Department of State, 2003 Country Reports on Human Rights Practices, released February 2004, *available at* http://www.state.gov/g/drl/rls/hrrpt/2003/index.htm (last visited July 6, 2004) (describing the Congo, Nigeria, Saudi Arabia, and Pakistan as "remaining poor," Yemen as "improving," and Iran as "worsening").

[95] *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 2488, 2495 (2003) (Scalia, J., dissenting) (quoting *Foster v. Florida*, 537 U.S. 990, 123 S. Ct. 470, 470 n.* (2002) (Mem.)).

For these reasons, along with those outlined in Respondent's brief, Respondent's death sentence should be vacated because it violates internationally accepted standards of human rights and constitutes cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States of America.

Respectfully submitted,

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The Dalai Lama
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Dr. Joseph Rotblat
Archbishop Desmond Tutu
Betty Williams
Jody Williams
American Friends Service Committee
Amnesty International
International Physicians for the Prevention of Nuclear War
Pugwash Conferences on Science and World Affairs
(Nobel Peace Prize Winners)

APPENDIX

Amici curiae include representatives from North America, Central America, South America, Europe, and Africa.

American Friends Service Committee, United States of America, 1947

For its humanitarian work and its work to promote fraternity between nations.

Betty Williams, Northern Ireland, 1976

For her role in founding the Peace Movement of Northern Ireland.

Mairead Corrigan-Maguire, Northern Ireland, 1976

For her role in founding the Peace Movement of Northern Ireland.

Amnesty International, England, 1977

For its efforts ensuring the worldwide implementation of the principles enshrined in the Universal Declaration of Human Rights, 1948.

Adolfo Perez Esquivel, Argentina, 1980

For his work to promote human rights based on non-violent means throughout South America.

President Lech Walesa, Poland, 1983

For the leading role he played in the Solidarity movement, which brought many freedoms to the Polish people.

Archbishop Desmond Tutu, South Africa, 1984

For his role in leading South Africa to a peaceful means of solving the problem of apartheid.

International Physicians for the Prevention of Nuclear War, United States of America, 1985

For its work to prevent the outbreak of nuclear war.

President Oscar Arias Sanchez, Costa Rica, 1987

For his work to bring peace to Central America.

The 14th Dalai Lama (Tenzin Gyatso), Tibet, 1989

For his consistently non-violent struggle for the libration of Tibet and his reverence for all things living.

President Mikhail Gorbachev, Former U.S.S.R., 1990

For his role in bringing peace to East-West relations.

President Frederik Willem De Klerk, South Africa, 1993

For his work for the peaceful termination of the apartheid regime, and for laying the foundations for a new democrati South Africa.

Dr. Joseph Rotblat, United Kingdom, 1995

For his efforts to diminish the part played by nuclear arms in international politics and, in the longer run, to eliminate such arms.

Pugwash Conferences on Science and World Affairs, Canada 1995

For its efforts to diminish the part played by nuclear arms in international politics and, in the longer run, to eliminate such arms.

Jody Williams, United States of America, 1997

For her work mobilizing global opinion against the use of anti-personnel mines, culminating in the passing of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997 Mine Ban Treaty).

President James Earl Carter, Jr., United States of America, 2002

For his efforts toward finding peaceful solutions to international conflicts, advancing democracy and human rights worldwide and promoting economic and social development.

Shirin Ebadi, Iran, 2003

For her efforts for democracy and human rights and her special focus on the struggle for the rights of women and children.